

FILED SARPY CO. NE

INSTRUMENT NUMBER

2004-22614

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*Shirley J. Dowling*  
REGISTER OF DEEDS

COUNTEN *P* C.E. *R*  
VERIFY *P* D.E. *R*  
PROOF *P*  
FEES \$ 37.50  
CHECK# 13135  
CHG \_\_\_\_\_ CASH \_\_\_\_\_  
REFUND \_\_\_\_\_ CREDIT \_\_\_\_\_  
SHORT .50 NCR \_\_\_\_\_

*R&E* Document Prepared by/Returned to: Northern Natural Gas Co., ATTN: ROW Dept., P.O. Box 3330, Omaha, NE 68103-0330

48701-36

### ENCROACHMENT AGREEMENT

This instrument made and entered into this 3rd day of June, 2004, by and between NORTHERN NATURAL GAS COMPANY, a Delaware corporation, (hereinafter referred to as "Northern"), with principal offices at P.O. Box 3330, Omaha, Nebraska 68103-0330, and BOYER YOUNG EQUITIES IV, LLC, a Nebraska limited liability company (hereinafter referred to as "Owner").

#### WITNESSETH THAT:

WHEREAS, Northern is the holder of an Easement granted by John W. Bock and Ida Bock, husband and wife, on the 17th day of February, 1951, covering the following described premises in Sarpy County, Nebraska:

The North Half of the Northwest Quarter (N $\frac{1}{2}$ NW $\frac{1}{4}$ ) of Section 3, Township 13 North, Range 12 East; and

which Easement was recorded the 23rd day of August, 1951, in Book 15 of Miscellaneous Records, at Page 37, and defined to a 90-foot wide strip by a Modification and Amendment of Easement Grant on the 4th day of February, 2004, recorded the 19th day of February, 2004, as Document Number 2004-05629; all in the Office of the Register of Deeds for Sarpy County, Nebraska (hereinafter referred to as "Easement"); and

WHEREAS, pursuant to the authority contained in said Easement, Northern has constructed and currently operates and maintains a 16-inch pipeline (NEB48701), along with the right to install additional facilities from time to time (hereinafter referred to as "Pipeline Facilities"), across and through the above described premises; and

WHEREAS, Owner is the present owner of the following described real property, with Pipeline Facilities situated upon the following described land in Sarpy County, Nebraska (hereinafter referred to as the "Owned Premises"):

Lots 1, 41, 126, 133-136 inclusive, Outlot A, and Outlot B of Summit Ridge, and Lots 1-9 inclusive, of Summit Ridge Replat 1, and Lots 1-6 inclusive, of Summit Ridge Replat 4, all located in the North Half of the Northwest Quarter (N $\frac{1}{2}$ NW $\frac{1}{4}$ ) of Section 3, Township 13 North, Range 12 East.

WHEREAS, Owner plans to construct a concrete walking path through Outlot A and Outlot B, Port Royal Drive crossing, and may choose to install sprinkler systems and fences in Lots 1, 41, 126, 133-136 inclusive, of Summit Ridge, and Lots 1-9 inclusive, of Summit Ridge Replat 1, and Lots 1-6 inclusive, of Summit Ridge Replat 4, (hereinafter referred to as "Encroachment") upon and within a portion of the confines of Northern's 90-foot Easement as depicted on Exhibit "A", with this written consent; and

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A

WHEREAS, Owner has been advised by Northern that Northern is a natural gas transmission company and that Northern operates a high pressure underground natural gas pipeline through the Owned Premises; and

WHEREAS, Owner has requested permission from Northern to maintain, use, and enjoy the Encroachment upon a portion of Northern's Easement and in close proximity to Northern's Pipeline Facilities; and

WHEREAS, Northern is willing to grant such permission upon the terms and conditions set forth as follows.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions hereinafter set forth, the parties hereto agree as follows:

1. Northern hereby grants permission to Owner to maintain, operate and use upon the Owned Premises and in close proximity to Northern's Pipeline Facilities, the said Encroachment, subject to the following conditions:

A. That Owner assumes all risks for damages, injuries, or loss to either property or persons, which may be incurred by Owner or its respective agents, invitees, or licensees present on or in the vicinity of the Easement and in any way associated with said Encroachment.

B. That the permission granted herein is limited exclusively to the proposed Encroachment within Northern's Easement. Owner shall not alter the grade or permit such alteration anywhere on the land upon which Northern has reserved its easement rights, without the prior express written consent of Northern.

C. That Owner shall at all times conduct all its activities on said Easement in such a manner as not to interfere with or impede the operation of Northern's Pipeline Facilities and activities in any manner whatsoever.

D. That Owner shall not plant any trees or shrubs within the confines of Northern's Easement without the prior express written consent of Northern.

2. Owner agrees to indemnify, protect, and hold Northern, its parent, affiliates, subsidiaries, and their directors, officers, employees, representatives, and agents harmless from and against any and all actions or causes of action, claims, demands, liabilities, loss, damage, injury, suit, proceeding, judgment, cost, or expense of whatever kind or nature, including but not limited to reasonable attorneys' fees, arising from or as a result of any incident, act, action, cause of action, negligence, transaction or omission of Owner in connection with, or incidental to the construction, operation, maintenance, or use of the said Encroachment within, upon or in the vicinity of the Easement Area, or from the operation, maintenance, use or presence of Northern's Pipeline Facilities upon or in the vicinity of the Encroachment except where such loss, cost, liability, or expense was proximately caused by the negligence of Northern or its employees. It is understood and agreed by the parties that under this Agreement, Owners shall be jointly and severally liable.

3. Owner agrees that protection of Northern's Pipeline Facilities will be maintained at all times.

4. Should Northern need to remove any of Owner's said Encroachment within its Easement in order to construct, maintain, operate, repair, remove, or resize Northern's existing or additional Pipeline Facilities, Owner or its respective heirs, successors, and assigns shall pay the cost of removing and replacing or reinstalling said Encroachment. In addition, all repair and maintenance work performed by Northern on its existing or additional Pipeline Facilities located on the Owned Premises shall be performed in a reasonable workmanlike manner and Northern shall restore the surface and grade of the Owned Premises where the work is performed, but shall not be liable for loss, damage, or replacement to Owner's said Encroachment or any associated equipment and facilities that exist within the Easement, and in this regard, Owner hereby releases Northern, its employees, agents, officers, and directors from any and all liability for any such loss or damage.

B

5. The Parties hereto understand that this Agreement in no way constitutes a waiver by Northern of its rights to enjoy its Easement unencumbered by the construction of said Encroachment within Northern's Easement.

6. It is expressly agreed to by and between the parties hereto that if Owner is in violation of any terms or conditions set forth in this Agreement, Northern, at its option, may terminate this Agreement upon ten (10) days' notice to the Owner. In the event of such termination, Owner shall immediately remove any and all of said Encroachment which may be situated on the Easement, or if Owner fails to remove any and all of said Encroachment, Northern may, at its option, remove said Encroachment at the expense of Owner and without any liability whatsoever. It is further agreed that the failure by Northern to exercise such option as to any such violation shall not constitute a waiver of Northern's future right to exercise such option as to the same or any future violation.

7. The provisions of the Easement, and all rights, powers, privileges, and duties, obligations, and liabilities created thereby, remain in full force and effect and are not affected hereby except to the extent and in the manner set forth above.

8. Owner agrees to indemnify, defend and hold Northern, its parent and affiliated companies, and the directors, officers and employees of any such corporate entities harmless from and against any liability, damage, claims, loss, cause of action, suit, proceeding, judgment, cost (including the cost or expense of environmental response, removal or remediation activities), fees or expense, including reasonable attorney's fees arising from: (1) non-compliance with any laws, regulations and orders applicable to the ownership or the operation and maintenance of the said Encroachment on the Owned Premises described herein, and (2) any incidents, acts, releases, negligence, transactions or omissions, or conditions on or affecting the Easement that would (i) contribute to or constitute a violation of any local, state or federal environmental rule, regulation, law or judicial order, (ii) result, in whole or in part, in any requirement to clean up or otherwise remedy or remediate a condition, (iii) give rise to any lien, liability, injunction, order, restriction, claim, expense, damage, fine or penalty, or (iv) adversely affect human health or the environment at or near the Easement.

This instrument and the covenants and agreements herein contained shall extend to and be binding upon the heirs, executors, administrators, successors, and assigns of the parties and the benefits of this Agreement shall run with the land.

IN WITNESS WHEREOF, the parties have executed this instrument the day and year first above written.

"NORTHERN"  
NORTHERN NATURAL GAS COMPANY

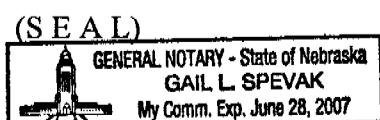
By Glen R. Hass  
Glen R. Hass  
Agent and Attorney in Fact

"OWNER"  
BOYER YOUNG EQUITIES IV, LLC

By Timothy W. Young  
Timothy W. Young  
Managing Member

STATE OF NEBRASKA )  
 )SS  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me, a Notary Public duly commissioned and qualified in and for said county and state, on this 7th day of June, 2004 by Glen R. Hass, the Agent and Attorney-in-Fact of Northern Natural Gas Company.



Gail L. Spevak  
Notary Public  
My Commission Expires 6-28-07

STATE OF Nebraska )  
 )SS  
COUNTY OF Sarpy )

The foregoing instrument was acknowledged before me, a Notary Public duly commissioned and qualified in and for said county and state, on this 3 day of June, 2004 by **Timothy W. Young**, the Managing Member of Boyer Young Equities, LLC.

(SEAL)



Randi A. Zabawa  
Notary Public  
My Commission Expires May 15, 2005

NEB 48701



Being part of the N1/2 of NW1/4  
Sec. 3, T13n, R12E

